

HOUSE OF REPRESENTATIVES STAFF ANALYSIS

BILL #: HB 1085 CS Educational Loan Marketing
SPONSOR(S): Evers
TIED BILLS: **IDEN./SIM. BILLS:** SB 862

REFERENCE	ACTION	ANALYST	STAFF DIRECTOR
1) <u>Colleges & Universities Committee</u>	<u>9 Y, 0 N, w/CS</u>	<u>Hatfield</u>	<u>Tilton</u>
2) <u>Finance & Tax Committee</u>	<u>5 Y, 0 N, w/CS</u>	<u>Levin</u>	<u>Diez-Arguelles</u>
3) <u>Education Council</u>	<u></u>	<u></u>	<u></u>
4) <u></u>	<u></u>	<u></u>	<u></u>
5) <u></u>	<u></u>	<u></u>	<u></u>

SUMMARY ANALYSIS

The bill creates s. 1009.9997, F.S., establishing the Educational Loan Marketing Corporation of Florida. The corporation is created as a not-for-profit entity that will be registered, incorporated, organized, and operated in compliance with ch. 617, F.S. The corporation, its board and advisory committees, or similar groups created by the corporation are subject to provisions relating to public records and meetings.

The bill authorizes the corporation to borrow funds and incur debt, including the issuance of revenue bonds, for the purposes of purchasing, servicing, and otherwise providing access and service as a secondary market for student loans in the state. The corporation is authorized to apply for private activity bond allocation in accordance with the provisions of part VI of ch. 159, F.S.

The bill requires that proceeds of the corporation be used for the creation of incentive programs serving Florida residents, such as, but not limited to, interest rate reductions for automated and timely payments and programs for students pursuing a degree in areas of critical need in the state.

The bill requires the corporation to be administered by a 13-member board of directors composed of 11 members appointed by the Governor, one member appointed by the President of the Senate, and one member appointed by the Speaker of the House of Representatives. The members must be confirmed by the Senate.

The bill requires the board of directors to annually elect a chair and vice chair. The bill provides for board members to be reimbursed for travel expenses and to file financial disclosure forms.

The bill requires the corporation to annually prepare and submit a business plan to the Department of Education (DOE) and requires the corporation to fulfill certain accounting and auditing requirements.

Bonds or other debt obligations issued by or on behalf of the corporation are not a debt of the state. Bonds issued by the corporation, their transfer, and the income therefrom are exempt from taxation.

The bill also provides that any start-up costs received from the state must be repaid by the corporation.

The bill requires the corporation to annually submit a proposed budget to the DOE for approval.

The fiscal impact of the bill is indeterminate. **See Fiscal Comments.**

FULL ANALYSIS

I. SUBSTANTIVE ANALYSIS

A. HOUSE PRINCIPLES ANALYSIS:

Provide limited government – The bill creates the Educational Loan Marketing Corporation of Florida as a not-for-profit entity to purchase, service, and otherwise provide access and service as a secondary market for student loans in the state.

B. EFFECT OF PROPOSED CHANGES:

Background

Secondary Loan Market

Secondary markets buy student loans from education lenders providing lenders with fresh capital they can use to originate new student loans. As a result, secondary markets are among the largest holders of student loans. The terms and conditions of a student loan do not change when it is sold to a secondary market. Secondary markets often offer repayment incentives on the loans they hold. These incentives can include principal rebates and interest rate reductions. There are national, regional, and state secondary markets.¹

Private Activity Bonds

Sections 141-147 of the Internal Revenue Code (the Code) relate to private activity bonds, defining such bonds to mean any bond issued as part of an issue which meets the private business use test and the private security or payment test, or which meets the private loan financing test.

Section 146 of the Code provides for the allocation of private activity bonds to each state. Part IV of ch. 159, F.S., relates to private activity bonds, pursuant to s. 146 of the Code. The purpose of part IV is to allocate the state volume limitation imposed on private activity bonds under the Code. The Division of Bond Finance of the State Board of Administration annually determines the amount of private activity bonds permitted to be issued in this state.

The state allocation of private activity bonds is divided among different allocation pools. After any allocation is made to the manufacturing facility pool, 50% of the remaining allocation is received by the 17 regional pools established in law; 25% is received by the Florida Housing Finance Corporation; 5% is received by the state allocation pool; and 20% is allocated to the Florida First Business Pool (FFB Pool).²

The FFB Pool provides written confirmation for private activity bonds to finance FFB projects certified by the Office of Tourism, Trade, and Economic Development (OTTED) as eligible to receive a written confirmation. OTTED has certified two secondary market corporations to participate in the FFB Pool to issue tax-exempt bonds to purchase student loans or to make student loans. They are the Florida Educational Loan Marketing Corporation and the Educational Funding of the South, Inc. According to the Florida First Bond Pool Evaluation Reports, both corporations applied on the basis of providing substantial economic benefit to the state.³

Secondary Markets in Florida

The Florida Educational Loan Marking Corporation (FELMAC) was incorporated as a Florida not-for-profit corporation in accordance with Section 150(d) of the Code in 1997 at the request of Governor Chiles.

¹ <http://www.finaid.org/loans/secondarymarkets.phtml>

² See s. 159.804, F.S.

³ Florida First Business Pool, Evaluation Report of FELMAC, December 13, 2002, at 1 and Evaluation Report of EdSouth, November 1, 2004, at 1.

FELMAC was approved for an allocation of \$33 million in 1997 and utilized the entire amount allocated in a tax-exempt bond issuance. In 1998 FELMAC was approved for \$30 million and was issued bonds totaling \$80 million (\$30 million Tax-Exempt and \$50 million Taxable). The loans went to 113,397 students at 40 institutions – 41% attending vocational trade schools, 34% attending a university, 25% attending a community college.

In 2001 FELMAC was approved for a \$60 million allocation and issued bonds totaling \$185 million (\$125 million Taxable and \$60 million Tax-Exempt). In 2001 the number of institutions utilizing FELMAC loans increased by 38% and the loans benefited an additional 5,000 students. FELMAC also began offering statewide scholarships and programs that focused on nurses and teachers in Florida.⁴

In February 2004, FELMAC merged with Arizona Educational Loan Marketing Corporation, an affiliate of Southwest Student Services Corporation. Southwest is a wholly owned subsidiary of Sallie Mae, a for-profit corporation and the nation's largest secondary market corporation.

Educational Funding of the South, Inc. (EdSouth) is a private not-for-profit, public benefit corporation organized for the sole purpose of funding postsecondary education loans under Title IV of the Federal Higher Education Act of 1965. EdSouth was established as a Tennessee corporation in 1985 and has provided approximately \$3.2 billion to fund over 675,000 Title IV loans for postsecondary students in the states of Tennessee, Florida, Georgia, Alabama, Mississippi, North Carolina, Pennsylvania, Virginia, and Kentucky.⁵ EdSouth was requested by Governor Bush to serve as a secondary market for educational loans in Florida.⁶

In 2002 and 2003, EdSouth was granted a total of \$252 million in tax exempt bonding authority to create the Florida Edloan program to provide low-cost eligible loans to currently certified Florida teachers who return to college for additional certification or advanced degrees and to Florida graduate and undergraduate nurses; two areas of critical need in the state.⁷ In 2004, EdSouth was granted additional tax-exempt bonding authority. These funds will only be used to make new loans (not refinance existing loans or purchase defaulted loans) to Florida residents and to nonresidents enrolled at Florida educational institutions. In addition, EdSouth agreed to fund all costs of issuance and required debt service reserve deposits from taxable financing sources so that all tax-exempt bond proceeds are used to fund Florida student loans.⁸

In the 2005-06 academic year, EdSouth will offer the new Techloan program for biomedical and computer engineers to help Florida expand its talent pool in these two strategic areas.⁹

According to EdSouth, total allocations in Florida have reached \$577 million and total bonds issued in Florida are \$424.2 million. To date, the approximate number of students assisted by EdSouth in Florida is 33,887. In addition, the last \$100 million of allocations was received after EdSouth's last bond issue; therefore, that allocation will be issued in 2005.

Effects of Proposed Changes

The bill creates s. 1009.9997, F.S., establishing the Educational Loan Marketing Corporation of Florida. The corporation is created as a not-for-profit entity that will be registered, incorporated, organized, and operated in compliance with ch. 617, F.S. The corporation, its board and advisory committees, or similar groups created by the corporation are subject to the provisions of ch. 119, F.S., relating to public records, and the provisions of ch. 286, F.S., relating to public meetings and records.

⁴ *Id.* at 1-2.

⁵ Florida First Business Bond Pool Evaluation Report of EdSouth, November 1, 2004, at 1.

⁶ *Id.*

⁷ *Id.*

⁸ *Id.* at 2.

⁹ See <http://edsouth.org/programs/fltechloan.aspx>.

The bill authorizes the corporation to borrow funds and incur debt, including the issuance of revenue bonds, for the purposes of purchasing, servicing, and otherwise providing access and service as a secondary market for student loans in the state. The corporation is authorized to apply for private activity bond allocation in accordance with the provisions of part VI of ch. 159, F.S.

The bill requires that proceeds of the corporation be used for the creation of incentive programs serving Florida residents, such as, but not limited to, interest rate reductions for automated and timely payments and programs for students pursuing a degree in areas of critical need in the state.

The bill requires the corporation to be administered by a 13-member board of directors composed of 11 members appointed by the Governor. One member of the Senate is appointed by the President of the Senate to serve as an ex officio non-voting member of the board, and one member of the House is appointed by the Speaker of the House of Representatives to serve as an ex officio non-voting member of the board. The 11 members of the board appointed by the Governor must be confirmed by the Senate. The membership of the board of directors appointed by the Governor must include the following:

- 2 members who are representatives of lending institutions that originate student loans in the state and who have a favorable reputation for skill, knowledge, and experience in the field of higher education loan finance.
- 2 members who are representatives of state universities.
- 2 members who are representatives of community colleges.
- 1 member who represents technical schools that are eligible to receive student loans.
- 1 member who represents independent colleges and universities.
- 2 members who are chosen from a list of five names submitted by the Chief Financial Officer.
- 1 lay citizen who does not derive a majority of his or her income from education or an education-related field.

Except for the members of the legislature, all members of the board of directors, including the chair, are appointed to serve 3-year terms; however, for the purpose of providing staggered terms, the initial appointments must be made in the following manner: 3 members for 1-year terms, 3 members for 2-year terms, and 5 members for 3-year terms.

The bill requires the board of directors to annually elect a chair and vice chair. The bill provides that members of the board of directors may be reimbursed from moneys of the corporation for expenses incurred as members, pursuant to s. 112.061, F.S. Members of the board of directors will not otherwise be compensated for their services.

Each member of the board of directors who is not otherwise required to file financial disclosure pursuant to s. 8, Art. II of the State Constitution or s. 112.3144, F.S., must file disclosure of financial interests pursuant to s. 112.3145, F.S.

The bill provides the board of directors the ability to employ or retain such persons as are necessary to perform the administrative and financial transactions and responsibilities of the corporation and to perform other necessary and proper functions required by law.

The bill requires the corporation to annually prepare and submit a business plan to the Department of Education (DOE) and requires the DOE to monitor the corporation and set performance standards that are consistent with its mission. The corporation must maintain adequate accounting records that comply with all applicable and federal and state laws and must authorize the DOE to have access to and conduct audits of all records concerning the contracted and outsourced functions or services.

The corporation must also meet all legal and auditing requirements for record retention and transfer to the state, at no cost to the state, of all public records in its possession upon termination or dissolution. All records stored electronically must be provided to the state in a format that is compatible with state information technology systems.

The bill provides that the revenues of the corporation are funds received for providing services as a secondary student loan market and for conducting all other activities of the corporation and must not be considered taxes, fees, licenses, or charges for services imposed by the legislature on individuals, businesses, or agencies outside state government.

Bonds and other debt obligations issued by or on behalf of the corporation must be payable solely from funds derived directly from sources other than state tax revenues, do not constitute a general obligation or indebtedness of the state or any of its agencies or political subdivisions, and are not a debt of the state or any of its agencies or political subdivisions. In addition, the full faith and credit of the state is not pledged to the payment of the principle of, premium if any on, or interest on such obligations. The issuance of such obligations must not directly, indirectly, or contingently obligate the state to use state funds, to levy or to pledge any form of taxation whatsoever, or to make any appropriation for payment of the principle of, premium if any on, or interest on such obligations.

Any bonds issued by the corporation, their transfer, and the income therefrom, including any profit made on the sale thereof, must at all times be free from taxation of every kind by the state or any political subdivision, local unit, or other instrumentality thereof. However, this exemption does not apply to any tax imposed by ch. 220, F.S., on interest, income, or profits on debt obligations owned by corporations other than the Educational Loan Marketing Corporation of Florida, Inc.

The bill provides legislative intent that the corporation be self-sustaining and that all operational costs, with the exception of reasonable and necessary start-up costs, be paid through income received by the corporation's activities. Any funds received from the state to assist in start-up costs must be repaid by the corporation.

The bill requires the corporation to keep expenses, including salaries and benefits, on par with similarly situated public-private entities, subject to approval by the DOE. The corporation must also annually submit a proposed budget to the DOE for approval.

The bill takes effect upon becoming law.

C. SECTION DIRECTORY:

Section 1: Creates s. 1009.9997, F.S., creating the Educational Loan Marketing Corporation of Florida to provide services as a secondary student loan market; requiring compliance with not-for-profit corporation requirements and public records and public meetings requirements; authorizing the corporation to borrow through public bonds and private financial sources; providing uses of proceeds of the corporation; providing for a board of directors and specifying membership; providing for powers and duties of the board of directors; requiring the corporation to submit a business plan to the Department of Education; providing accounting and audit requirements; requiring revenues of the corporation to be used for providing secondary student loan market services; prohibiting state indebtedness or obligation; exempting bonds issued by the corporation, their transfer, and the income therefrom from taxation; providing intent and requirements relating to costs; and requiring budget approval by the department.

Section 2: Provides an effective date upon becoming law.

II. FISCAL ANALYSIS & ECONOMIC IMPACT STATEMENT

A. FISCAL IMPACT ON STATE GOVERNMENT:

1. Revenues:

See FISCAL COMMENTS

2. Expenditures:

See FISCAL COMMENTS

B. FISCAL IMPACT ON LOCAL GOVERNMENTS:

1. Revenues:

This bill does not appear to have a fiscal impact on local government revenues.

2. Expenditures:

This bill does not appear to have a fiscal impact on local government expenditures.

C. DIRECT ECONOMIC IMPACT ON PRIVATE SECTOR:

This bill may provide financial benefits to borrowers (former students and their parents), including lower interest rates on their loans and an array of programs to provide financial assistance to students, such as loan forgiveness programs and interest rate reductions for automated and timely payments.

D. FISCAL COMMENTS:

The fiscal impact of the bill is indeterminate.

Start-up costs may be incurred in order to create the Educational Loan Marketing Corporation of Florida; however, currently no appropriation request has been made. While the corporation is authorized to issue private activity bonds, the state allocation for private activity bonds is fully subscribed each year.

III. COMMENTS

A. CONSTITUTIONAL ISSUES:

1. Applicability of Municipality/County Mandates Provision:

The mandates provision is not applicable. This bill does not: require counties or municipalities to spend funds or take an action requiring the expenditure of funds; reduce the authority that counties or municipalities have to raise revenue in the aggregate; or reduce the percentage of a state tax shared with counties or municipalities.

Other:

Dual Office Holding:

Article II, Section 5 of the Florida Constitution prohibits dual office holding. It forbids persons who hold one office in Florida from holding any other public office. There are several exceptions articulated in the Constitution:

a notary public or military officer may hold another office, and any officer may be a member of a constitutional revision commission, taxation and budget reform commission, constitutional convention, or statutory body having only advisory powers.

The bill states that the Educational Loan Marketing Corporation of Florida is not a unit or entity of state government. However, the corporation is created by statute, the board is appointed by governmental officials pursuant to the statute, and confirmed by the Senate. Its budget must be approved by the Department of Education. It is only reasonable to conclude that this corporation is a public entity and that its members are public office holders. Therefore, House and Senate members may be in violation of the dual office holding prohibition if they serve as voting members of the corporate board. Amendments 1 – 4 adopted by the Committee on Finance and Tax were designed to eliminate these constitutional concerns.

B. RULE-MAKING AUTHORITY:

None.

C. DRAFTING ISSUES OR OTHER COMMENTS:

None.

IV. AMENDMENTS/COMMITTEE SUBSTITUTE & COMBINED BILL CHANGES

On April 5, 2005, the Colleges & Universities Committee adopted a strike-all amendment to HB 1085. The bill was reported favorable with a Committee Substitute (CS).

The CS:

- Streamlines the appointment process for members of the board of directors.
- Models the corporation after other statutorily created not-for-profit corporations such as Enterprise Florida, Inc.
- Provides additional accountability measures, such as submission of a business plan to the DOE, providing accounting and audit requirements, and requiring budget approval by the DOE.
- Clarifies bond provisions based on comments from the Division of Bond Finance.

This analysis is drawn to the CS.

On April 15, 2005 the Finance and Tax Committee adopted 4 amendments to the CS. The amendments clarify that the corporation is a governmental entity, specify that the members appointed by the Speaker of the House and President of the Senate are non-voting ex officio members of the corporation, and require that the 11 members appointed by the Governor be subject to confirmation by the Florida Senate.